

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-2069

US v. Sarubin
(Bennett)

TAX LAW. Whether the district court erred in refusing to enter judgment for the United States for the amount of statutory interest that had accrued under Section 6601 of the IRC.

06-1942

Meson v. GATX Technology
(Chasanow)

CONTRACTS. Various issues related to claim for commission regarding sale of business assets in termination of business.

06-1236

Joseph Afanwi v. Gonzales

IMMIGRATION. Whether this court has jurisdiction to review the Board's orders; other issues.

04-7824

Incumaa v. Ozmint
(Currie)

FIRST AMENDMENT. Whether genuine issue of material fact exists preventing summary judgment on claim that prison regulations violate right to receive information.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, SEPTEMBER 25, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-7464

US v. Daniel A. Weymouth
(Friedman)

HABEAS CORPUS. Whether counsel's erroneous advice regarding maximum possible sentence constituted ineffective assistance.

06-26

Meyer v. Branker
(Flanagan)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

06-1881 (L), 06-1917

SNE Enterprises Inc v. NLRB

LABOR LAW. Are NLRB's findings supported by substantial evidence; other issues.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

TUESDAY, SEPTEMBER 25, 2007

REVD 9/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

06-1630
MacKenzie Medical v. Leavitt
(Davis)

06-1960
Moser v. MCC Outdoor
(Osteen)

NATURE OF CASE

MEDICARE. Whether Secretary of HHS has statutory authority to require suppliers to provide documentation in addition to certificate of medical necessity to receive reimbursement; whether said requirement violates the Paperwork Reduction Act; other issues.

TITLE VII. Whether evidence of hostile work environment and retaliation was sufficient to withstand summary judgment; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

TUESDAY, SEPTEMBER 25, 2007

REVD 9/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-8

Moses v. Branker
(Osteen)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

06-1475

Ohio River Valley v. Green Valley Coal Co
(Chambers)

SURFACE MINING CONTROL & RECLAMATION ACT: Whether attorneys' fees and costs should have been awarded against intervenor for claims over which district court lacked jurisdiction; whether plaintiffs demonstrated sufficient success on merits; propriety of prejudgment interest award.

06-4106

US v. Jason S. Johnson
(Conrad)

CRIMINAL LAW & PROCEDURE. Sufficiency of evidence to sustain aggravated identity theft conviction; sentencing issue.

06-1235

Nixon v. Montgomery Cnty MD
(Messitte)

CIVIL. Whether the district court erred by granting summary judgment for defendants on constitutional and state law claims relating to removal and destruction of plaintiffs' personal property by defendants.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

TUESDAY, SEPTEMBER 25, 2007

REVD 9/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1724

EEOC v. Federal Express Corp
(Quarles)

EMPLOYMENT LAW. Whether the evidence was sufficient to support an award of punitive damages; whether award was unconstitutionally excessive.

06-1410

Guthrie v. National Rural Elec
(Howard)

ERISA. Applicability of limited deference standard for reviewing denial of ERISA benefits where employer contracted with and funds a not-for-profit trade association cooperative to sponsor and administer its employee benefits plan; substantial evidence.

06-4841

US v. Darryl Boynes, Jr.
(Spencer)

JURY TRIAL WAIVER. Whether Boynes voluntarily and intelligently waived his right to a jury trial.

PANEL V
COURTROOM FIVE
Courthouse Room 348
9:30 a.m.

TUESDAY, SEPTEMBER 25, 2007

REVD 8/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-29

Gray v. Branker
(Boyle)

HABEAS CORPUS. Numerous issues arising out of state
capital murder conviction and sentencing.

06-2108

Pee Dee Health Care v. Sanford
(Perry)

CONTRACTS. Whether forum selection clause was waived or
inapplicable.

06-2189

Whitley v. Hartford Life & Acc
(Whitney)

ERISA. Whether Plan Administrator's decision to deny
continuation of long term disability benefits was an abuse
of discretion.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

WEDNESDAY, SEPTEMBER 26, 2007

REVD 9/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4124

US v. Rodrick D. Williams
(Currie)

CRIMINAL LAW & PROCEDURE. Whether South Carolina Youthful Offender drug conviction constituted predicate offense for armed career criminal sentence, 18 U.S.C. Section 924(e).

06-4244

US v. Kelvin L. Spearman
(Williams)

CRIMINAL LAW & PROCEDURE. Sufficiency of evidence; other issues.

06-1520 (L), 06-1553

Final Analysis Comm v. General Dynamics
(Messitte)

CONTRACT. Whether summary judgment was proper on fraud and misrepresentation claims; whether damages awards were properly set aside; whether award for breach of a related contract should have been set aside; other issues.
30 mins. per side

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

WEDNESDAY, SEPTEMBER 26, 2007

REVD 9/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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NUMBER AND STYLE

NATURE OF CASE

06-2143

Long v. Dunlop Sports Group
(Herlong)

CIVIL. Did district court properly conclude that appellants did not sustain an "employment loss" within the meaning of the WARN Act.

06-1680

RZS Holdings AVV v. PDVSA Petroleo SA
(Lee)

ARBITRATION. Propriety of district court's decisions to grant plaintiff's counsel's motion to withdraw, to strike plaintiff's pleadings, and to confirm arbitration award.

06-1986

Lanier v. Norfolk Southern
(Seymour)

FEDERAL JURISDICTION. Whether district court properly assumed jurisdiction under Class Action Fairness Act; other issues.

06-4578

US v. Charles A. Bly
(Moon)

CRIMINAL LAW & PROCEDURE. Whether conduct was protected under the First Amendment; whether indictment alleged attempt to extort money from a "person" within the meaning of 18 U.S.C. Section 876(b).

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

WEDNESDAY, SEPTEMBER 26, 2007

UNITED STATES COURT OF APPEALS
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(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-2156

Horace Mann Ins Co v. General Star Natl
(Keeley)

INSURANCE LAW. Whether insurance policy was an excess
policy; whether proration was appropriate.

06-2267

Louis Vuitton v. Haute Diggity Dog
(Cacheris)

TRADEMARK & COPYRIGHT INFRINGEMENT. Numerous issues
relating to alleged violations of trademark, trade dress,
and copyrights.

06-2126

Blackshear v. Reliance Standard
(Fox)

ERISA. Whether Plan Administrator abused its discretion by
denying coverage under the plain language of the policy
based on "clerical error."

06-2181 (L), 07-1249

Giovanni Carandola v. City of Greensboro
(Osteen)

MUNICIPAL LAW. Does city ordinance regulating location of
adult-oriented businesses apply to existing businesses;
attorneys' fees issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

WEDNESDAY, SEPTEMBER 26, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

04-4618 (L), 04-4619 04-4620
US v. Aaron Demarco Foster
(Blake)

05-4508
US v. Marcus Baskerville
(Blake)

06-2278
Go Computer Inc v. Microsoft Corp
(Motz)

06-2006
Stanford v. Continental Casualty
(Britt)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Numerous issues arising from convictions for drug trafficking, witness tampering, carjacking, and murder.

CRIMINAL LAW & PROCEDURE. Sufficiency of evidence regarding scope of conspiracy; other issues.

CIVIL PROCEDURE. Whether order dismissing antitrust claims is a final appealable order; issues relating to rescission of order approving voluntary dismissal, statute of limitations, and fraudulent concealment.

ERISA. Was denial of benefits appropriate under the modified abuse of discretion standard.

PANEL V
COURTROOM FIVE
Courthouse Room 348
9:30 a.m.

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UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

06-1541 (L), 06-1652
Smithfield Packing v. NLRB

06-1930 (L), 07-1098
Long Term Care v. US
(Motz)

06-1744 (L), 06-1770
Adams, et al v. The Brinks Company,
(Sargent)

NATURE OF CASE

LABOR LAW. Whether company was denied due process; whether walkout constituted concerted protected activity; whether Board's findings are supported by substantial evidence.

LONG TERM CARE SECURITY ACT. Whether the EEOC has jurisdiction over disputes arising from a carrier's insurability determinations under the LTCSA; other issues.

ERISA. Numerous issues relating to merger of retirement plans, alleged misrepresentation and violation of fiduciary duty.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

THURSDAY, SEPTEMBER 27, 2007

REVD 8/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-28

Gardner v. Ozmint
(Wooten)

HABEAS CORPUS. Numerous issues arising out of state
capital murder conviction and sentencing.

06-2302

Weinberger, et al. v. Tucker
(Brinkema)

CIVIL PROCEDURE. Whether claims for legal malpractice,
breach of fiduciary duty, and fraud are barred by doctrine
of collateral estoppel.

06-1665

Sewell Coal Company v. Triplett

BLACK LUNG. Whether ALJ's conclusions that Triplett has
pneumoconiosis and that his total disability is due to
pneumoconiosis are supported by substantial evidence.
15 mins. per side

06-1948

Singh v. Gonzales

IMMIGRATION. Whether Board properly denied alien relief
under former Section 212(c) of the INA.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

THURSDAY, SEPTEMBER 27, 2007

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

06-1662
US Steel Mining Co v. DOWCP

06-1929
Massasoit v. Carter
(Eliason)

NATURE OF CASE

BLACK LUNG BENEFITS. Whether ALJ's conclusion that
pneumoconiosis contributed to miner's death is supported by
substantial evidence.
15 mins. per side

CIVIL RIGHTS. Whether defendants were entitled to qualified
immunity with respect to claim of excessive use of force;
other issues.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

THURSDAY, SEPTEMBER 27, 2007

REVD 9/21/07

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

06-27

Call v. Branker
(Thornburg)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

06-2091 (L), 06-2145

Volvo Trademark v. CLM Equipment Co
(Thornburg)

COMMERCIAL LAW. Numerous challenges to jury instructions and rulings in suit brought under the Arkansas Franchise Practices Act.

06-4913

US v. Johnny R. Fancher
(Maxwell)

SENTENCING. Whether appellant received adequate notice of upward variance sentence; reasonableness of upward variance.

06-6760

US v. Luessenhop
(Cacheris)

INEFFECTIVE ASSISTANCE. Whether Luessenhop's attorney rendered ineffective assistance regarding the calculation of the amount of loss at sentencing.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

THURSDAY, SEPTEMBER 27, 2007

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

06-1818 (L), 06-1836
Wilson v. Phoenix Specialty
(Harwell)

06-1974
Time Warner Enter v. Carteret Craven Elec
(Dever)

05-4273 (L), 05-4407
US v. Said Karim Hayez
(Flanagan)

05-1516
Morgan v. DOWCP

NATURE OF CASE

ADA. Challenge to findings that employer "regarded" plaintiff as disabled, failed to offer him reasonable accommodation, and that its articulated reason for eliminating his position was pretextual; remedy issues.

PUBLIC UTILITIES. Whether defendant violated a duty to charge reasonable and non-discriminatory rates.

CRIMINAL LAW & PROCEDURE. Reasonableness of variance sentence; other issues.

BLACK LUNG BENEFITS. Whether ALJ's conclusion that pneumoconiosis did not contribute to miner's death is supported by substantial evidence.
15 mins. per side

PANEL V
COURTROOM FIVE
Courthouse Room 348
9:30 a.m.

THURSDAY, SEPTEMBER 27, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4777

US v. Stanley McCoy Cross
(Howard)

CRIMINAL LAW & PROCEDURE. Whether district court erred in refusing to reinstate suppression motion after rejecting defendant's guilty plea.

06-4850

US v. Stanaus McCoy
(Lee)

CRIMINAL LAW & PROCEDURE. Whether police officer lacked reasonable suspicion of criminal activity when he stopped defendant; other issues.

06-5237

US v. Willoughby Colonna
(Doumar)

CRIMINAL LAW & PROCEDURE. Whether appellant was "in custody" for Miranda purposes; evidentiary issue; bench questioning of witnesses.

06-4258 (I), 06-4264

US v. Peter Robert Jordan
(Hudson)

CRIMINAL LAW & PROCEDURE. Whether prosecution for conspiracy violated prior plea agreement; whether admission of deceased co-conspirator's statements violated Crawford v. Washington; other issues.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
8:30 a.m.

FRIDAY, SEPTEMBER 28, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-7709
US v. Blackstock
(Cacheris)

HABEAS CORPUS. Whether the harmless error exception under
USA v. Emmanuel, 288 F.3d 644 (4th Cir. 2002) survives
after the Supreme Court's decision in USA v. Castro, 540
U.S. 375 (2003).

06-4531 (L), 06-4701
US v. Hoffler-Riddick
(Kelley)

CRIMINAL LAW & PROCEDURE. Sufficiency of evidence to
establish money laundering; propriety of judgment of
acquittal; other issues.

06-2076
Educational Cred Mgt v. Mosko
(Osteen)

BANKRUPTCY. Whether bankruptcy court erred in discharging
debtors' student loan debt.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
8:30 a.m.

FRIDAY, SEPTEMBER 28, 2007

REVD 9/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-5173
US v. Randy Kelly
(Goodwin)

CRIMINAL LAW & PROCEDURE. Whether district court erred in admitting and excluding evidence, and sufficiency of evidence, in 18 U.S.C. Section 2423(b) conviction; other issues.

07-4101
US v. Eric Jamison
(Davis)

CRIMINAL LAW & PROCEDURE. Was defendant in custody during a police interview at the hospital where he was undergoing treatment?

06-4512
US v. Jose A. Mastrapa
(Conrad)

CRIMINAL LAW & PROCEDURE. Whether there was sufficient factual basis to support guilty plea.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
8:30 a.m.

FRIDAY, SEPTEMBER 28, 2007

REVD 9/24/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(09/25/2007 - 09/28/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

04-5101

US v. Jeffrey M. Etheredge
(Williams)

CRIMINAL LAW & PROCEDURE. Whether district court abused its discretion in excluding testimony on defendant's generosity to family and friends and in refusing to give a good faith instruction; other issues.

06-5074

US v. Raul M. Oscar-Torres
(Howard)

CRIMINAL LAW & PROCEDURE. Whether evidence of an alien's identity and illegal presence in the United States, ascertained after a concededly unlawful vehicle stop, should have been suppressed.

06-4622

US v. C.A.M.
(Chasanow)

CRIMINAL LAW & PROCEDURE. Whether the Juvenile Justice and Delinquency Prevention Act authorizes transfer to adult prosecution of a conspiracy charge that is not inherently a crime of violence; other issues.

06-4878

US v. Anthony Patterson
(Currie)

CRIMINAL LAW & PROCEDURE. Whether failure to pass a polygraph in regard to an unrelated ten-year-old homicide constituted a breach of plea agreement that relieved the government of its obligation to file a motion for downward departure; other issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
8:30 a.m.

FRIDAY, SEPTEMBER 28, 2007